

**Notice of Allowability**

Application No.

10/767,441

Examiner

N. M. Minnifield

Applicant(s)

LAWRENCE ET AL.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/17/07 and 12/18/07.
2. ☒ The allowed claim(s) is/are 1-4, 6-10, 12-14 and 40; now renumbered 1-13 respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application  |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date <u>attached</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment  |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance                                    |
|  | 9. <input type="checkbox"/> Other _____  |

## EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with James Heintz, 41828 and Daryl A. Basham, 45869 on December 18, 2007.

2. Applicants' amendment after final filed October 17, 2007 is acknowledged and has been entered. Claims 5, 11 and 15-39 have been canceled. Claims 1 and 14 have been amended. Claims 1-4, 6-10, 12-14 and 40 are now pending in the instant application. All rejections have been withdrawn in view of the amendments to the claims (10/17/07 and 12/18/07) and/or Applicants' comments.

3. The application has been amended as follows:

1. (Currently Amended) An isolated nucleic acid, wherein said nucleic acid [comprises] consisting of the sequence as set forth in SEQ ID NO:9 or is complementary to SEQ ID NO:9.

2. (Previously Presented) The isolated nucleic acid of Claim 1, wherein said nucleic acid encodes a protein having virulent biological activity.

3. (Previously Presented) The isolated nucleic acid of Claim 1, wherein a vector comprises said sequence.

4. (Previously Presented) The isolated nucleic acid of Claim 3, wherein a host cell comprises said vector.

5. (Canceled).

6. (Previously Presented) The isolated nucleic acid of Claim 1, wherein said sequence comprises a contiguous reading frame from about residue 887 to 1500 of SEQ ID NO:9.

7. (Previously Presented) The isolated nucleic acid of Claim 6, wherein said complement specifically hybridizes to said contiguous reading frame in an *L. monocytogenes* strain selected from the group consisting of *L. monocytogenes* ATCC 19111 serovar 1, *L. monocytogenes* ATCC 19112 serovar 2, *L. monocytogenes* ATCC 19113 serovar 3, *L. monocytogenes* ATCC 19115 serovar 4b, *L. monocytogenes* ATCC 19116 serovar 4c, *L. monocytogenes* ATCC 19116 serovar 4d, *L. monocytogenes* ATCC 19118 serovar 4e, *L. monocytogenes* ATCC 15313 serovar 1, *L. monocytogenes* EDG (NCTC 7973) serovar 1/2a, *L. monocytogenes* HCC7 serovar 1, *L. monocytogenes* HCC8 serovar 1, *L. monocytogenes* 168, *L. monocytogenes* 180, *L. monocytogenes* 418, *L. monocytogenes* 742, *L. monocytogenes* 874, *L. monocytogenes* 1002, *L. monocytogenes* 1084, and *L. monocytogenes* 1400.

8. (Previously Presented) The isolated nucleic acid of Claim 7, wherein said contiguous reading frame encodes an amino acid sequence 203 residues in length.

9. (Previously Presented) The isolated nucleic acid of Claim 1, wherein said sequence hybridizes to residues 479-1500 of SEQ ID NO:9.

10. (Previously Presented) The isolated nucleic acid of Claim 9, wherein said hybridizing sequence is SEQ ID NO:27.

11. (Canceled).

12. (Previously Presented) The isolated nucleic acid of Claim 1, wherein said sequence hybridizes to the complement of residues 887-900 of SEQ ID NO:9.

13. (Previously Presented) The isolated nucleic acid of Claim 12, wherein said hybridizing sequence is SEQ ID NO:26.

14. (Previously Presented) An isolated nucleic acid complex comprising:  
a) at least two primers, wherein one of said at least two primers comprises the sequence as set forth in SEQ ID NO:26 or SEQ ID NO:27; and  
b) a nucleic acid comprising [[a]] the sequence as set forth in SEQ ID NO:9, wherein said nucleic acid is isolated from an *L. monocytogenes* strain.

15-39. (Canceled).

40. (Previously Presented) The isolated nucleic acid complex of Claim 14, wherein said *L. monocytogenes* strain is selected from the group consisting of *L. monocytogenes* ATCC 19111 serovar 1, *L. monocytogenes* ATCC 19112 serovar 2, *L. monocytogenes* ATCC 19113 serovar 3, *L. monocytogenes* ATCC 19115 serovar 4b, *L. monocytogenes* ATCC 19116 serovar 4c, *L. monocytogenes* ATCC 19116 serovar 4d, *L. monocytogenes* ATCC 19118 serovar 4e, *L. monocytogenes* ATCC 15313 serovar 1, *L. monocytogenes* EDG (NCTC 7973) serovar 1/2a, *L. monocytogenes* HCC7 serovar 1, *L. monocytogenes* HCC8 serovar 1, *L. monocytogenes* 168, *L. monocytogenes* 180, *L. monocytogenes* 418, *L. monocytogenes* 742, *L. monocytogenes* 874, *L. monocytogenes* 1002, *L. monocytogenes* 1084, and *L. monocytogenes* 1400.

4. Claims 1-4, 6-10, 12-14 and 40 have been allowed and renumbered 1-13 respectively.

Application/Control Number:  
10/767,441  
Art Unit: 1645

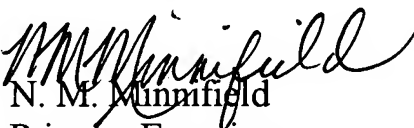
Page 5

5. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is 571-272-0860. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shanon Foley can be reached on 571-272-8975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
N. M. Minnifield  
Primary Examiner  
Art Unit 1645

NMM  
December 18, 2007

**CLEAN COPY OF ALLOWED CLAIMS**

1. An isolated nucleic acid, wherein said nucleic acid consisting of the sequence as set forth in SEQ ID NO:9 or is complementary to SEQ ID NO:9.
2. The isolated nucleic acid of Claim 1, wherein said nucleic acid encodes a protein having virulent biological activity.
3. The isolated nucleic acid of Claim 1, wherein a vector comprises said sequence.
4. The isolated nucleic acid of Claim 3, wherein a host cell comprises said vector.
6. The isolated nucleic acid of Claim 1, wherein said sequence comprises a contiguous reading frame from about residue 887 to 1500 of SEQ ID NO:9.
7. The isolated nucleic acid of Claim 6, wherein said complement specifically hybridizes to said contiguous reading frame in an *L. monocytogenes* strain selected from the group consisting of *L. monocytogenes* ATCC 19111 serovar 1, *L. monocytogenes* ATCC 19112 serovar 2, *L. monocytogenes* ATCC 19113 serovar 3, *L. monocytogenes* ATCC 19115 serovar 4b, *L. monocytogenes* ATCC 19116 serovar 4c, *L. monocytogenes* ATCC 19116 serovar 4d, *L. monocytogenes* ATCC 19118 serovar 4e, *L. monocytogenes* ATCC 15313 serovar 1, *L. monocytogenes*

EDG (NCTC 7973) serovar 1/2a, *L. monocytogenes* HCC7 serovar 1, *L. monocytogenes* HCC8 serovar 1, *L. monocytogenes* 168, *L. monocytogenes* 180, *L. monocytogenes* 418, *L. monocytogenes* 742, *L. monocytogenes* 874, *L. monocytogenes* 1002, *L. monocytogenes* 1084, and *L. monocytogenes* 1400.

8. The isolated nucleic acid of Claim 7, wherein said contiguous reading frame encodes an amino acid sequence 203 residues in length.

9. The isolated nucleic acid of Claim 1, wherein said sequence hybridizes to residues 479-1500 of SEQ ID NO:9.

10. The isolated nucleic acid of Claim 9, wherein said hybridizing sequence is SEQ ID NO:27.

12. The isolated nucleic acid of Claim 1, wherein said sequence hybridizes to the complement of residues 887-900 of SEQ ID NO:9.

13. The isolated nucleic acid of Claim 12, wherein said hybridizing sequence is SEQ ID NO:26.

14. An isolated nucleic acid complex comprising:

a) at least two primers, wherein one of said at least two primers comprises the sequence as set forth in SEQ ID NO:26 or SEQ ID NO:27; and

b) a nucleic acid comprising [[a]] the sequence as set forth in SEQ ID NO:9, wherein said nucleic acid is isolated from an *L. monocytogenes* strain.

40. The isolated nucleic acid complex of Claim 14, wherein said *L. monocytogenes* strain is selected from the group consisting of *L. monocytogenes* ATCC 19111 serovar 1, *L. monocytogenes* ATCC 19112 serovar 2, *L. monocytogenes* ATCC 19113 serovar 3, *L. monocytogenes* ATCC 19115 serovar 4b, *L. monocytogenes* ATCC 19116 serovar 4c, *L. monocytogenes* ATCC 19116 serovar 4d, *L. monocytogenes* ATCC 19118 serovar 4e, *L. monocytogenes* ATCC 15313 serovar 1, *L. monocytogenes* EDG (NCTC 7973) serovar 1/2a, *L. monocytogenes* HCC7 serovar 1, *L. monocytogenes* HCC8 serovar 1, *L. monocytogenes* 168, *L. monocytogenes* 180, *L. monocytogenes* 418, *L. monocytogenes* 742, *L. monocytogenes* 874, *L. monocytogenes* 1002, *L. monocytogenes* 1084, and *L. monocytogenes* 1400.